IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 513 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDBHAI ALLARAKHABHAI BHATTI - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MS TANHA N PARIKH for Applicant(s) : 1,
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 13/07/2007

ORAL JUDGMENT

1. Rule. Mr. M.R.Mengdey, learned Additional Public Prosecutor waives service of rule on behalf of the respondent – State. With the consent of the

learned Advocates appearing on behalf of the respective parties, the matter is taken for final hearing today.

2. By way of this petition, under Articles 226 and 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code, the petitioner – original applicant has prayed for an appropriate order quashing and setting aside the judgment and order dated 04.12.2003 passed by the learned Metropolitan Magistrate, Court No.11, Ahmedabad in rejecting the application of the petitioner for handing over of *Muddamal* – Maruti Car. It is also prayed to to quash and set aside the judgment and order dated 29.12.2003 passed by the learned Additional City Sessions Judge, Court No. 7, Ahmedabad in Criminal Revision Application No. 270 of 2003, in dismissing the said Revision Application confirmed the order passed by the learned trial Court in not handing over the possession of *Muddamal* – Maruti Car bearing Registration No. GJ-12-E-9190.

3. It appears from the record that in the complaint being C.R.No. I – 9 of 2003 registered with D.C.B., Crime, Ahmedabad, *Muddamal* – Maruti Zen

bearing Registration No. GJ.12.E.9190 was seized on 14.07.2003 by the Police Inspector, Crime Branch from the applicant. Thereafter, the petitioner submitted an application under Section 451 of the Criminal Procedure Code for handing over the possession of *Muddamal* – Maruti Zen to him contending *inter-alia* that he was the *bona – fide* purchaser and that nobody has claimed custody of the said vehicle. The said application came to be rejected by the learned trial Court by order dated 04.12.2003. Being aggrieved and dissatisfied with the order passed by the learned Metropolitan Magistrate, Court No.11, Ahmedabad in rejecting the application under Section 451 of the Criminal Procedure Code, the petitioner preferred Revision Application being No. 270 of 2003 before the learned Additional City Sessions Judge, Ahmedabad. The learned Additional City Sessions Judge, Ahmedabad by *vide* his judgment dated 29.12.2003 dismissed the said Revision Application. Being aggrieved and dissatisfied with both the orders, the petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India read with Section 482 of the Criminal Procedure Code.

4. Ms. Tanha Parikh, learned Advocate appearing on behalf of the petitioner has submitted that the

petitioner is the *bona – fide* purchaser and in the R.T.O. record the same is in the name of the petitioner. She has relied upon the order dated 29.01.2007 passed by the learned Single Judge of this Court in Special Criminal Application No. 971 of 2006 by which the learned Single Judge for the very complaint and in the similar set of circumstances, has passed the order of releasing *Muddamal* – Maruti Car in favour of the applicant on certain conditions.

5. When pointed question was asked to the learned Additional Public Prosecutor, whether any other person has claimed custody of the said vehicle or not, Mr.Mengdey, learned Additional Public Prosecutor under the instructions of the Investigating Officer has submitted that till date nobody has claimed the custody of the Maruti Zen.

6. Considering the order dated 29.01.2007 passed by the learned Single Judge in Special Criminal Application No. 971 of 2006 as well as the decision of the Hon'ble Supreme Court in the case of ***Rajendra Prasad v/s. State of Bihar & Anr.*** reported in *2002 SSC (Cri.) 1034* and other judgments which are relied in the aforesaid judgment, the impugned orders

passed by the learned Metropolitan Magistrate, Court No.11, Ahmedabad as well as the order passed by the learned Additional City Sessions Judge, Ahmedabad, rejecting the application of the petitioner for handing over the possession of *Muddamal* – Maruti Car bearing No. GJ.12.E.9190, are hereby quashed and set aside. It is directed that the Court in whose custody the *Muddamal* – vehicle is presently kept, shall release the same to the petitioner on the following conditions:

(a) He shall satisfy the trial Court that he is the registered owner of the vehicle;

(b) He shall furnish security of Rs.1,00,000/- (Rupees One Lac only) with the learned trial Court;

(c) He shall produce the vehicle either before the trial Court or before such other authority/s as the Court may direct;

(d) He shall not transfer the vehicle to anybody else or part with the possession of the same, until disposal of the case; and

(e) The petitioner to furnish Undertaking to that effect, to the learned Trial Court at the time of releasing of *Muddamal* – Maruti

Car.

Rule is made absolute to the aforesaid extent. Direct service is permitted.

[M.R.Shah, J.]

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